## IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT J. MAHAN,	§	
	§	No. 356, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1002012688
Appellee.	8	

Submitted: July 10, 2012 Decided: October 5, 2012

Before HOLLAND, JACOBS and RIDGELY, Justices.

## ORDER

This 5<sup>th</sup> day of October 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Robert J. Mahan, filed this appeal from the Superior Court's June 4, 2012 denial of his first motion for postconviction relief. The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Mahan's opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

<sup>&</sup>lt;sup>1</sup> Del. Supr. Ct. R. 25(a).

- (2) It appears that Mahan was indicted in April 2010 on seven sex offenses, *i.e.*, six counts of Unlawful Sexual Contact in the First Degree and one count of Continuous Sexual Abuse of a Child. Mahan pled guilty on October 28, 2010 to two counts of Unlawful Sexual Contact and was sentenced on January 7, 2011 to sixteen years at Level V suspended after four years for home confinement and probation.
- (3) In his motion for postconviction relief filed on January 6, 2012, Mahan asked the Superior Court to allow him to withdraw his guilty plea on the basis that his videotaped confession was coerced by the police. Also, Mahan alleged that his defense counsel was ineffective because counsel failed to file a motion to suppress the confession and failed to subpoena witnesses.
- (4) The Superior Court referred the postconviction motion to a Commissioner for a report and recommendation. The Commissioner in turn directed that the State file a response to the motion and that Mahan's defense counsel file an affidavit in response to the claims of ineffective assistance of counsel.
- (5) On May 3, 2012, the Commissioner issued a report recommending that the postconviction motion should be denied. Based on the record, including defense counsel's affidavit and the plea colloquy and

signed guilty plea forms, the Commissioner found that Mahan's guilty plea was entered knowingly and voluntarily and that Mahan had failed to establish that his counsel was ineffective.

- (6) Mahan filed objections to the Commissioner's report. After considering the objections and reviewing the record, the Superior Court issued an order on June 4, 2012, adopting the Commissioner's report and denying Mahan's motion for postconviction relief. This appeal followed.
- (7) To prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a defendant must demonstrate a reasonable probability that, but for his counsel's unprofessional errors, he would not have pleaded guilty but would have insisted on proceeding to trial.<sup>2</sup> The defendant must also make, and substantiate, concrete claims of actual prejudice.<sup>3</sup>
- (8) In this case, we agree with the Superior Court that Mahan's conclusory allegations of ineffective assistance of counsel are insufficient to establish that his counsel's representation was either unreasonable or prejudicial and/or that his guilty plea was involuntary. The transcript of the guilty plea colloquy confirms that Mahan thoroughly discussed the plea with

<sup>&</sup>lt;sup>2</sup> See Foote v. State, 2012 WL 562791 (Del. Supr.) (citing Albury v. State, 551 A.2d 53, 60 (Del. 1988)).

<sup>&</sup>lt;sup>3</sup> *Id.* (citing *Younger v. State*, 580 A.2d 552, 556 (Del. 1980)).

his counsel and was satisfied with the advice he received. In the absence of clear and convincing evidence to the contrary, Mahan is bound by the representations he made during the guilty plea proceeding, namely that he was satisfied with the representation provided by his counsel and that no one had coerced him into entering the plea.<sup>4</sup>

(9) Mahan's claim of a coerced confession is further unavailing because his voluntary guilty plea, as reflected in the transcript, constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea.<sup>5</sup> If Mahan wanted to challenge his videotaped confession, he could have done so at trial rather than accept the plea bargain that allowed him to plead guilty to only two of the seven charges against him.

NOW, THEREFORE IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

<sup>&</sup>lt;sup>4</sup> *Id.* (citing *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997)).

<sup>&</sup>lt;sup>5</sup> *Id.* (citing *Downer v. State*, 543 A.2d 309, 312-13 (Del. 1988)). *See also Knox v. State*, 2003 WL 21456287, at \*2 (Del. Supr.) (affirming denial of postconviction relief on basis that voluntary guilty plea constituted a waiver of claims about arrest and confession).